

PROPOSED REVISION TO NRC ENFORCEMENT POLICY

The NRC Enforcement Policy was first issued as a formal policy statement on September 4, 1980. Since that time, the Enforcement Policy has been revised on a number of occasions. The NRC is constantly refining and improving its policy and processes to ensure that enforcement actions are appropriate and support the agency's performance goals of: (1) maintaining safety; (2) reducing unnecessary burden; (3) making NRC activities and decisions more effective, efficient, and realistic; and (4) increasing public confidence.

Although this proposed policy revision primarily clarifies existing guidance on how and when the NRC will issue enforcement actions that involve individuals, the NRC is making this proposed policy revision available for public review as a reflection of the agency's continuing commitment to providing stakeholders opportunities to participate in its regulatory programs.

The NRC staff is proposing to revise Section IV.A.4, "Willfulness," by adding a sentence that highlights that willful violations may also result in enforcement action against non-licensed, as well as licensed, individuals. Although the Enforcement Policy is primarily focused on NRC licensees, given the agency's authority and existing position in this area, it is appropriate to clearly communicate and emphasize this policy. In addition, Section IV.A.4 states, "Licensees are expected to take *significant* remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation (emphasis added)." The staff is proposing to delete the word *significant* to avoid any possible confusion or misunderstanding regarding the NRC's intent on this issue. The NRC expects licensees to take remedial action for willful violations *commensurate with the circumstances*. In other words, each case is unique and should be handled on a case-by-case basis depending on the circumstances. A conforming change would also be made to Section VI.A.1.c.(4).

The NRC staff is proposing to revise Section VIII, "Enforcement Actions Involving Individuals." The NRC maintains that there are circumstances when the NRC should consider either taking an enforcement action directly against an individual (addressed in newly created section A) or taking an action against a licensee that directly impacts an individual (addressed in newly created section B). The staff is proposing to document the agency's authority for issuing enforcement actions against individuals (licensed and non-licensed) and through newly created sections, identify circumstances in which the agency would (1) not take enforcement action, (2) consider issuing a Notice of Violation, (3) consider issuing an order, and (4) consider issuing a civil penalty. The staff is proposing a flow chart to summarize the thresholds and expected outcomes for issuing enforcement actions against individuals. The staff believes that this approach (i.e., characterizing the attributes and circumstances associated with a violation) will be more effective in implementation than the current approach (i.e., identifying the specific types of violations). The agency recognizes that, notwithstanding this proposed framework, cases will still need to be carefully evaluated on a case-by-case basis to ensure that all relevant circumstances are considered in arriving at the appropriate outcome. Therefore, another section has been created that describes the additional circumstances that the staff may consider in determining the appropriate agency response. Although the proposed revisions are primarily focused on whether to take enforcement action against individuals, the staff continues to emphasize that licensees are generally held responsible for the acts of their employees and contractors and that as such, the NRC will normally take some enforcement action against a licensee for willful violations committed by its employees, contractors, or contractors' employees.

The staff is also proposing to revise Section VIII, "Enforcement Actions Involving Individuals," to state that any proposed enforcement action involving individuals must be issued with the concurrence of the Director, Office of Enforcement (OE). The concurrence of the

appropriate Deputy Executive Director is retained for any proposed order (other than Confirmatory) or civil penalty to be issued to an individual. The previous guidance required the Deputy Executive Director's concurrence for any individual action. The NRC believes that concurrence for individual actions should be based on the merits of the particular case. Given the NRC's experience with individual actions, as well as existing delegations, it is appropriate for the Director, OE, to have the authority to approve all enforcement actions to individuals other than orders and civil penalties (i.e., Confirmatory Orders, Notices of Violation without civil penalties, Non-Cited Violations, Demands for Information, Confirmatory Action Letters, or Letters of Reprimand).

The staff believes that these proposed changes will help to make the Enforcement Policy easier for all stakeholders to understand and easier for internal stakeholders to implement, thus improving consistency.

The proposed revisions to Sections IV.A.4, VI.A.1.d.(4), and VIII are as follows:

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IV. SIGNIFICANCE OF VIOLATIONS

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A. Assessing Significance

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4. Willfulness. Willful violations are by definition of particular concern to the Commission because its regulatory program is based on licensees and their contractors, employees, and agents acting with integrity and communicating with candor. Willful violations cannot be tolerated by either the Commission or a licensee. Therefore, a violation may be considered more significant than the underlying noncompliance if it includes indications of willfulness. The term "willfulness" as used in this policy embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., negligence or inadvertent clerical errors in a document submitted to the NRC. In determining the significance of a violation involving willfulness, consideration will be given to such factors as the position and responsibilities of the person involved in the violation (e.g., licensee official¹ or non-supervisory employee), the significance of any underlying violation, the intent of the violator (i.e., careless disregard or deliberateness), and the economic or other advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the significance assessment will be dependent on the circumstances of the violation. However, if a licensee refuses to correct a minor violation within a reasonable time such that it willfully continues, the violation should be considered at least more than minor. Licensees are expected to take remedial action in responding to willful violations commensurate with the circumstances such that it demonstrates the seriousness of the violation thereby creating a deterrent effect within the licensee's organization. Willful violations also may

¹The term "licensee official" as used in this policy statement means a first-line supervisor or above, a licensed individual, a radiation safety officer, or an authorized user of licensed material whether or not listed on a license. Notwithstanding an individual's job title, severity level categorization for willful acts involving individuals who can be considered licensee officials will consider several factors, including the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.

result in enforcement action against non-licensed, as well as licensed, individuals (see Section VIII).

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VI. DISPOSITION OF VIOLATIONS

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A. Non-Cited Violation (NCV)

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1. Power Reactor Licensees

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- d. The violation was willful. Notwithstanding willfulness, an NCV may still be appropriate if:

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(4) Remedial action commensurate with the circumstances was taken by the licensee such that it demonstrated the seriousness of the violation to other employees and contractors, thereby creating a deterrent effect within the licensee's organization.

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VIII. ENFORCEMENT ACTIONS INVOLVING INDIVIDUALS

Licensees are generally held responsible for the acts of their employees and contractors. As such, the NRC will normally take some enforcement action against a licensee for willful violations committed by its employees, contractors, or contractors' employees. However, there are circumstances when the NRC may either take an enforcement action directly against an individual or take an action against a licensee that directly impacts an individual. These circumstances are discussed in sections A and B respectively.

Enforcement actions involving individuals, including licensed individuals, are significant actions, which will be closely controlled and judiciously applied. Any proposed enforcement action involving an individual must be issued with the concurrence of the Director, OE. In addition, the applicable Deputy EDO's concurrence is required for any proposed order (other than confirmatory) or civil penalty to an individual. In deciding whether to issue an enforcement action to an individual as well as to the licensee, the NRC recognizes that judgments will have to be made on a case-by-case basis.

The NRC will normally provide an individual an opportunity to address apparent violations before the NRC takes any individual enforcement action (Notice of Violation, order, or civil penalty). See Section V, "Predecisional Enforcement Conferences," for additional information.

A. Enforcement Action Against Individual

The Commission has the authority to issue enforcement actions to any individual (licensed or non-licensed) who engages in deliberate misconduct that causes or would have caused, if not detected, a licensee to be in violation of any rule, regulation, or order related to NRC-licensed activities (e.g., 10 CFR 50.5). Deliberate misconduct by an individual, as defined in the regulations, means an intentional act or omission that the person knows: (1) would cause a licensee to be in violation of any rule, regulation, or order, or any term, condition, or limitation of any license, issued by the Commission; or (2) constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee. Any person who violates the requirements of the deliberate misconduct rule may be subject to the full range of enforcement sanctions, specifically, Notices of Violation, civil penalties, and orders. The particular sanction to be used will be determined on a case-by-case basis. In addition, the NRC may issue Demands for Information to gather information to enable it to determine whether an order or other enforcement action should be issued.

The Commission also has the authority to issue enforcement actions to any individual who holds an NRC license (e.g., licensed reactor operators) for violations of Commission requirements, regardless of whether willfulness was involved.

1. No Enforcement Action

The NRC normally will not issue an enforcement action against an individual in cases where any of the following conditions are met:

- The individual is non-licensed and the actions were not as a result of deliberate misconduct.
- The individual is not a licensee official as defined by Section IV.A.4 of this Policy and the individual's deliberate misconduct resulted in no actual safety consequences and a very low potential for safety consequences to occur. Very low potential for safety consequences to occur is defined as a Severity Level IV or minor violation, absent willful consideration, would normally be warranted for the licensee, or a green finding if the SDP process is used to classify the significance.

2. Notice of Violation

Issuance of a Notice of Violation to an individual will be considered in cases where any of the following conditions are met:

- The individual engaged in deliberate misconduct that resulted in no actual safety consequences but had a low to moderate potential for safety consequences to occur. Low to moderate potential for safety consequences to occur is defined as a Severity Level III violation, absent willful consideration, would normally be warranted for the licensee, or a white finding if the SDP process is used to classify the significance.
- The individual is a licensee official and engaged in deliberate misconduct (regardless of the significance of the underlying violation).
- The deliberate misconduct was repeated on numerous occasions over an extended period of time, without the misconduct being identified by either the employer or the NRC, regardless of the safety significance or whether or not the individual was a licensee official.

- The individual is NRC-licensed and the violation involved (i) willfulness (i.e., deliberate misconduct or careless disregard), (ii) fitness-for-duty, or (iii) significant personal license performance issues (e.g., unauthorized abandoning of reactor controls, dereliction of duty). As previously addressed in Section IV.A.4, careless disregard involves actions that are more than mere negligence. It reflects voluntary and intentional conduct constituting or resulting in a violation accompanied by reckless disregard or indifference as to whether a requirement will be violated.

Notices of Violation issued to non-licensed individuals will not normally be assigned severity levels. The NRC considers all Notices of Violation to individuals to be significant agency actions. Notices of Violation issued to NRC-licensed individuals will be assigned a severity level in accordance with the principles outlined in the Enforcement Policy and the examples provided in the appropriate supplement.

3. Order

Issuance of an Order to an individual will be considered in cases where any of the following conditions are met:

- The individual engaged in repetitive deliberate misconduct, that is, the individual has previously been put on notice regarding such acts, either by the NRC through an individual Notice of Violation or order, or through the individual's employer, typically evidenced by disciplinary action related to prior wrongdoing by the individual.
- The individual engaged in deliberate misconduct that resulted in actual safety consequences or a significant potential for safety consequences to occur. A significant potential for safety consequences to occur is defined as either a Severity Level I or II violation, absent willful consideration, would normally be warranted for the licensee, or either a red or yellow finding if the SDP process is used to classify the significance.
- The individual engaged in deliberate misconduct and deliberately intended to harm others or cause a safety problem, whether or not such harm or safety problem occurred.
- The individual engaged in deliberate misconduct and succeeded in persuading, or attempted to persuade others to participate in wrongdoing.
- The individual is NRC-licensed and the violation involved (i) willfulness (i.e., deliberate misconduct or careless disregard), (ii) fitness-for-duty, or (iii) significant personal license performance issues (e.g., unauthorized abandoning of reactor controls, dereliction of duty), and any of the conditions described above (absent deliberate misconduct) are met. Deliberate misconduct is not a required element for consideration of an order to NRC-licensed individuals. As previously addressed in Section IV.A.4, careless disregard involves actions that are more than mere negligence. It reflects voluntary and intentional conduct constituting or resulting in a violation accompanied by reckless disregard or indifference as to whether a requirement will be violated.
- As a result of the individual's actions, the NRC no longer has reasonable assurance that licensed activities will be conducted in a manner that provides adequate protection to the public health and safety. Although licensing actions, such as an order modifying or suspending a license, may have been taken prior to the completion of the enforcement process under these circumstances, the NRC may consider issuing an order to the individual if it is determined that the individual's actions were deliberate.

Orders issued to individuals may include provisions that would:

- Prohibit involvement in NRC licensed activities for a specified period of time (normally the period of suspension would not exceed 5 years) or until certain conditions are satisfied, e.g., completing specified training or meeting certain qualifications.
- Require notification to the NRC before resuming work in licensed activities, typically for a specified period of time (normally the notification period would not exceed 5 years).
- Require the person to notify a prospective employer or customer engaged in licensed activities that the person has been subject to an NRC order.
- Modify, suspend, or revoke an individual's NRC license.

4. Civil Penalty

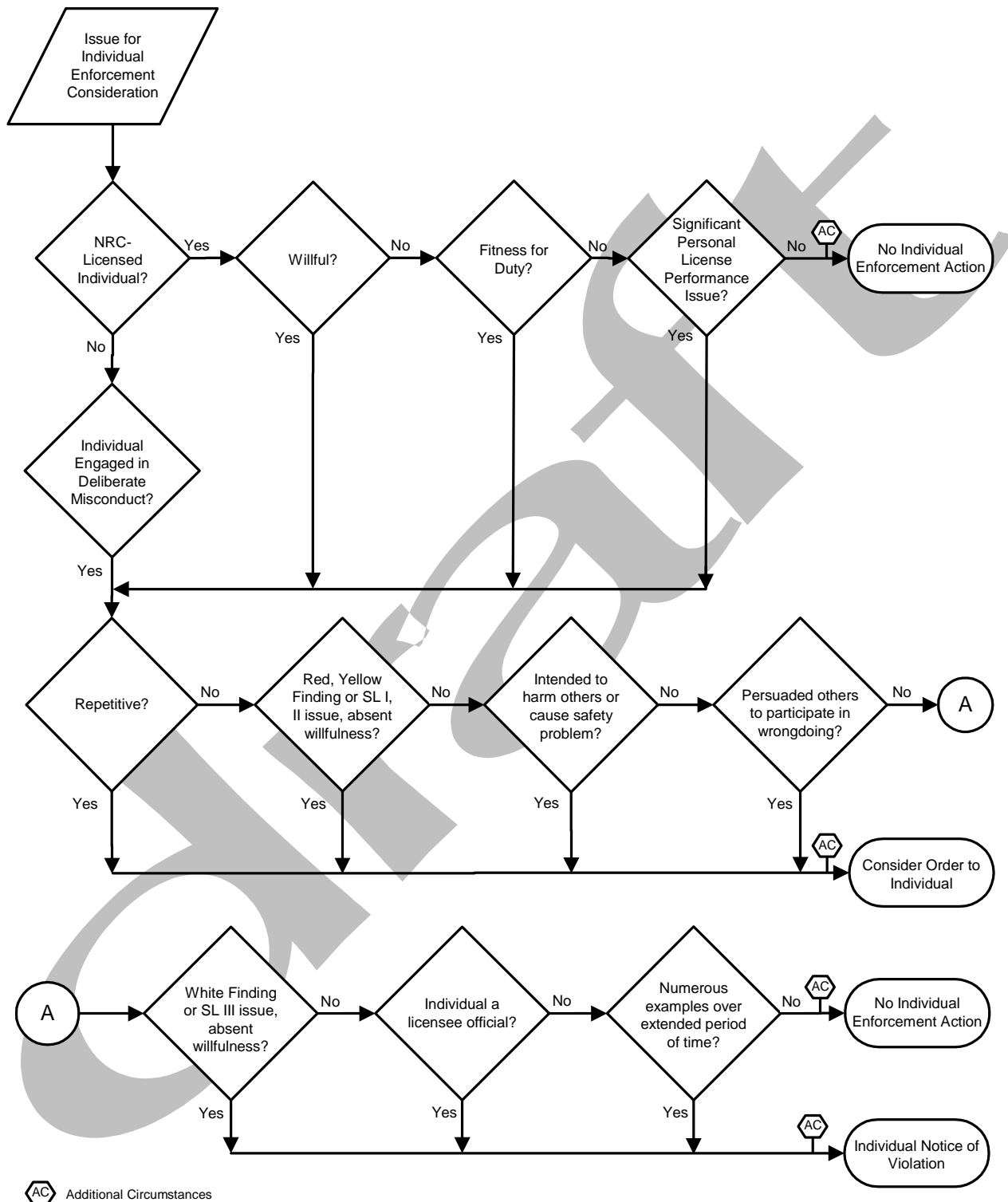
Except for individuals subject to civil penalties under section 206 of the Energy Reorganization Act of 1974, as amended, the NRC will not normally impose a civil penalty against an individual. However, section 234 of the Atomic Energy Act (AEA) gives the Commission authority to impose civil penalties on "any person." "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

5. Additional Circumstances

As previously stated, in deciding whether to issue an enforcement action to an individual as well as to the licensee, the NRC recognizes that judgments will have to be made on a case-by-case basis. Therefore, notwithstanding the outcome of the process described above, the NRC may choose to either refrain from taking action or propose a different action to ensure that the agency position takes into consideration all of the relevant circumstances of the particular case. Circumstances that may be considered include, but are not limited to the following:

- The significance of the underlying technical issue (not considered in discrimination cases).
- The benefit to the wrongdoer, e.g., personal or corporate gain.
- The degree of management responsibility or culpability.
- The individual's position. Notwithstanding an individual's job title, the position of the individual relative to the licensee's organizational structure and the individual's responsibilities relative to the oversight of licensed activities and to the use of licensed material.
- The attitude of the wrongdoer, e.g., admission of wrongdoing, acceptance of responsibility.
- The employer's response, e.g., disciplinary action taken.

The following flow chart summarizes the policy when considering the appropriate individual enforcement sanction described above.



B. Enforcement Action Against Licensee That Impacts Individual

The NRC may take enforcement action against a licensee that may directly impact an individual, where, as a result of the conduct of the individual, the NRC no longer has reasonable assurance that licensed activities will be properly conducted. The NRC may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement actions may also be taken regarding matters that raise issues of integrity, competence, fitness-for-duty, or other matters that may not constitute a violation of specific Commission requirements.

An order modifying a facility license may be issued to require:

- The removal of the person from all NRC licensed activities for a specified period of time or indefinitely.
- Notice to the NRC before utilizing the person in NRC licensed activities.
- The licensee to provide notice of the issuance of such an order to representatives of potential employers involved in NRC licensed activities making reference inquiries.
- Retraining, additional oversight, or independent verification of activities performed by the person, if the person is to be involved in licensed activities.